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GOVERNMENT DOCUMENTS

Bill Pr34

(Chapter Pr23
Statutes of Ontario, 1985)

An Act respecting the City of Hamilton

Mr. Charlton

<i>1st Reading</i>	July 10th, 1985
<i>2nd Reading</i>	December 18th, 1985
<i>3rd Reading</i>	December 18th, 1985
<i>Royal Assent</i>	December 18th, 1985

Bill Pr34**1985****An Act respecting the City of Hamilton**

Whereas The Corporation of the City of Hamilton considers it desirable to establish a corporation to maintain, operate, manage, market and promote Hamilton Place, the Hamilton Convention Centre and the Victor K. Copps Trade Centre-Arena as social, cultural, educational and recreational facilities for the benefit of the City and the people of the City of Hamilton and in the public interest; and whereas the applicant hereby applies for special legislation for such purposes; and whereas it is expedient to grant the application;

Preamble

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

“board” means the board of directors of the corporation;

“City” means The Corporation of the City of Hamilton;

“Convention Centre” includes the enterprise, structure and necessary interest in land appurtenant thereto located on the south side of King Street West known as “Hamilton Convention Centre” in Lloyd D. Jackson Square in the City of Hamilton;

“corporation” means The Hamilton Entertainment and Convention Facilities Inc. as established by this Act;

“council” means the council of the City;

“director” means a person who is a member of the board;

“Theatre-Auditorium” includes the enterprise, structure and necessary interest in land appurtenant thereto located on the north side of Main Street West known as “Hamilton Place” in Lloyd D. Jackson Square in the City of Hamilton;

“Trade Centre-Arena” includes the enterprise, structure and necessary interest in land appurtenant thereto located at the southeast corner of Bay Street North and York Boulevard known as the “Victor K. Copps Trade Centre-Arena” in Lloyd D. Jackson Square in the City of Hamilton.

Corporation
established

2.—(1) There is hereby established a corporation without share capital under the name of “The Hamilton Entertainment and Convention Facilities Inc.”.

Purposes

(2) The principal purposes of the corporation are to maintain, operate, manage, market and promote the Theatre-Auditorium, the Convention Centre and the Trade Centre-Arena for the benefit of the City and the people of the City of Hamilton and in the public interest for the objects of the corporation.

Objects

3.—(1) The objects of the corporation are,

- (a) to provide facilities and services for performing arts, including the carrying on of all or any of the operations of a theatre, music hall, concert hall, ballroom and cinema;
- (b) to provide and present educational, social and cultural activities related to the arts or otherwise;
- (c) to establish educational facilities and provide instruction in all areas of the arts;
- (d) to present, produce, manage and conduct performances in the performing arts, including plays, dramas, comedies, operas, revues, promenades and other concerts, musicals and other pieces, ballet shows, exhibitions, variety and other entertainment;
- (e) to provide facilities and services for amusement and entertainment activities; and
- (f) to provide facilities and services for the holding of conventions, meetings, receptions, conferences, exhibitions, displays, sporting events, trade shows and events of every kind.

Idem

(2) The corporation may carry out its objects anywhere in the City of Hamilton.

Head office

4.—(1) The corporation shall have its head office at the City of Hamilton.

(2) The corporation shall have a corporate seal upon which its corporate name shall appear. Seal

5. Section 21 of the *Business Corporations Act, 1982* applies with necessary modifications to oral and written contracts entered in the name of or on behalf of the corporation before the day this Act comes into force. Application of 1982, c. 4, s. 21

6. The corporation has the capacity and, subject to this Act, the rights, powers and privileges of a natural person. Powers

7.—(1) The maintenance, operation and management of the real property owned by the City, comprised in the Theatre-Auditorium, the Convention Centre and the Trade Centre-Arena, are hereby entrusted to the corporation for the purposes and objects thereof. Management of real property

(2) Notwithstanding subsection (1), the City may assume the maintenance, operation and management of the real property or any part thereof entrusted to the corporation and the corporation is thereafter divested of its responsibilities in relation to the real property so assumed, as the City may determine. Assumption by City

8. The corporation shall not acquire or hold any interest in real property. No power to acquire real property

9.—(1) The corporation shall have a board of directors who shall manage, supervise and conduct the affairs of the corporation in accordance with the purposes and objects of the corporation. Board of directors

(2) The board shall be composed of, Composition

(a) the mayor of the City who shall be a director by virtue of office; and

(b) thirteen other members appointed by the council of whom,

(i) four shall be members of council, and

(ii) nine shall not be members of council.

(3) The directors appointed under subclause (2) (b) (i) shall be appointed for a term of office not exceeding their term of office as members of council. Term of office

(4) Directors appointed under subclause (2) (b) (ii), other than directors designated under subsection (5) to retire in Idem

1985 or 1986, shall be appointed for a term of three years and shall be appointed so that one-third of such directors retires at the end of each year.

First
directors

(5) The council shall appoint the first directors forthwith after the coming into force of this section and shall designate which of the first directors appointed under subclause (2) (b) (ii) shall serve until the end of 1985, 1986 and 1987.

Removal

(6) A director may be removed at any time from office by a resolution passed by a majority of the council.

Vacancy

(7) Where the office of a director becomes vacant for any reason, the vacancy may be filled by council for the remainder of the unexpired term of the director whose office is vacant.

Reappoint-
ment

(8) A director may be reappointed by council upon expiration of his or her term or otherwise.

Remunera-
tion

(9) Directors may serve without remuneration or with such remuneration as the council may determine.

Quorum

10.—(1) A majority of the directors constitutes a quorum at any meeting of the board and where there is one or more vacancies, a majority of the remaining directors constitutes a quorum.

Idem

(2) Notwithstanding any vacancy among the directors, a quorum of directors may exercise the powers of all the directors.

Voting

(3) A director has only one vote.

Chairman,
etc.

11.—(1) The directors shall elect annually a chairman, a first vice-chairman and a second vice-chairman from amongst themselves.

Absence

(2) The first vice-chairman shall act in place and stead of the chairman when the chairman is absent.

Idem

(3) The second vice-chairman shall act in place and stead of the chairman when both the chairman and first vice-chairman are absent.

Member of
council

(4) At least one of the chairman or first vice-chairman or second vice-chairman shall be a member of council and at least one of them shall not be a member of council.

Re-election

(5) The chairman, first vice-chairman and second vice-chairman are eligible for re-election.

12.—(1) The board shall hold at least nine monthly meetings each year. Monthly meetings

(2) A majority of members of the board may requisition a special meeting of the board by serving a copy of the requisition on the chairman or a vice-chairman of the board. Special meetings

(3) The chairman of the board may call a special meeting of the board at any time whether or not he or she has received a requisition under subsection (2). Idem

(4) Every meeting of the board shall be called upon service by the secretary of the corporation of a written notice of meeting upon each director not later than two days preceding the date and time for the meeting, specifying the purpose of the meeting. Notice

13.—(1) The board, Committees

(a) shall appoint a committee for each of the Theatre-Auditorium, the Convention Centre and the Trade Centre-Arena; and

(b) may appoint such other committees as it may determine.

(2) Each committee appointed under clause (1) (a) may at any time file a report with the clerk of the City and council shall consider the report. Power to report

(3) After considering a report under subsection (2), the council may make recommendations to the board and the board shall consider the recommendations. Council recommendations

(4) Each committee appointed under subsection (1) shall be composed of not less than three members of the board and shall perform such duties and undertake such responsibilities as the board specifies and shall report to the board. Duties

14.—(1) A record of all meetings of the board shall be maintained in a book kept for that purpose. Records

(2) All minutes, orders, directions and proceedings shall be entered in the book. Minutes, etc.

(3) All minutes shall be signed by the person who is chairman of the meeting and by the secretary of the corporation and shall be impressed with the corporation's seal over the signatures. Signing

Committees (4) Subsections (1), (2) and (3) apply with necessary modifications to committees of the board.

Secretary **15.** The board shall appoint a secretary of the corporation who shall,

- (a) give notice of meetings of the board;
- (b) keep all minutes of meetings and proceedings of the board;
- (c) submit to the board at each of its meetings the minutes of the next preceding meeting of the board; and
- (d) perform such duties, in addition to those set out in clauses (a), (b) and (c), as the board may from time to time direct.

Personnel **16.—**(1) The corporation may, in accordance with practices and procedures approved by council,

- (a) appoint, hire or otherwise engage officers, employees, agents or others;
- (b) determine the qualifications, responsibilities, duties and positions and terms and conditions of employment or service of persons appointed, hired or otherwise engaged by the corporation, including those employed under section 17;
- (c) establish classifications for persons appointed, hired or otherwise engaged by the corporation, including those employed by the corporation under section 17, and reclassify, transfer or promote any such person;
- (d) determine the remuneration, salaries and benefits of, and any payments to, officers, servants, agents or others; and
- (e) suspend, discharge or otherwise terminate employment or services.

Senior
positions

(2) The council, for the purposes of this section, may define the positions that are senior personnel positions and no person shall be appointed, hired or otherwise engaged to fill a senior personnel position until the approval of council has been obtained.

17.—(1) Notwithstanding clause 16 (1) (a), the employees of The Hamilton Performing Arts Corporation, Inc. and The Hamilton Place Convention Centre, Inc., who were employed by each of those corporations on the day preceding the day this Act comes into force, shall be offered first employment with the corporation.

Offer of
employment

(2) Notwithstanding clause 16 (1) (b), a person who accepts employment offered under subsection (1) shall be entitled to receive remuneration and benefits not less than the person was receiving on the day before the day on which this Act comes into force.

Previous
salary,
wages,
benefits

(3) Any person who accepts employment under subsection (1) shall be entitled to receive during the first year of employment with the corporation holidays with pay equivalent to those which the person would have been entitled to if the person had remained in the employment of The Hamilton Performing Arts Corporation, Inc. or The Hamilton Place Convention Centre, Inc.

Holidays

(4) Every person who is a part of a bargaining unit, as recognized by the existence of a collective agreement or agreements between The Hamilton Performing Arts Corporation, Inc. and a union, shall be deemed to be employed by the corporation on the date this Act comes into force pursuant to the terms and conditions of employment as set out in the collective agreement or agreements and the corporation shall be bound by, and be deemed a party to, the collective agreement or agreements as of the date this Act comes into force.

Existing
collective
agreements

(5) The corporation and the union shall be deemed to have acquired the rights, privileges and duties of The Hamilton Performing Arts Corporation, Inc. and the union, respectively, under the *Labour Relations Act* and the collective agreement or agreements between The Hamilton Performing Arts Corporation, Inc. and the union.

Rights,
privileges
and duties of
corporation
and union
R.S.O. 1980,
c. 228

(6) Subject to any collective agreement, nothing in this section prevents the corporation from terminating the employment of an employee for cause.

Termination
of
employment

18.—(1) Subject to section 16, the board shall appoint a managing director who shall be the chief executive officer of the corporation.

Managing
director

(2) The managing director shall not be a member of the board.

Idem

Item (3) The board shall by by-law or resolution define the duties of the managing director for the proper conduct of the business of the corporation.

Budget **19.**—(1) The corporation shall prepare or cause to be prepared annually a detailed budget of estimated revenue and expenditure as the City treasurer may require.

Budget details (2) The corporation, in such manner as the council may require, shall provide in the budgets submitted to council all financial details of revenues and expenditures including expense accounts, expenses incurred, remuneration, salaries and any other information that council may require.

Submission to council (3) The corporation shall submit the estimates to council as required.

Annual report (4) The corporation shall cause to be prepared an annual report which shall include audited financial statements.

Submission to council (5) The corporation shall submit the annual report to council as required.

Fiscal period (6) The fiscal period of the corporation shall be the same as the fiscal period of the City.

Annual budget **20.**—(1) The annual budget of the corporation shall be subject to the approval of council, and, except with the approval of council, no obligation other than normal operating expenses may be incurred or expenditure made by the corporation before approval of the budget.

Approval (2) Council is not obligated to approve the budget of the corporation or any part thereof and may make such changes to the budget as it determines.

Limitation on powers **21.**—(1) The corporation shall not incur any indebtedness or obligation, whether contingent or otherwise, or expend any moneys except as authorized by this section.

Authorized expenditure (2) Within the limits of its budget, as approved by council, the corporation may incur indebtedness and other obligations and expend money for the carrying out of its purposes and objects and for the conduct of its affairs and the exercise of its powers under this Act, including all expenses necessarily incurred in connection therewith.

Savings (3) Notwithstanding subsection (2), the corporation may, with the approval of council, incur indebtedness and other

obligations and expend moneys in excess of the approved budget for any fiscal period.

(4) Notwithstanding subsection (2), no bonus or like sum of money or any other benefit in substitution thereof shall be paid to any person. Bonus

(5) Where any indebtedness or obligation proposed to be incurred would extend beyond the term of council then in office, the approval of council to the incurring of the indebtedness or obligation shall be subject to section 149 of the *Municipal Act* and to sections 64 and 65 of the *Ontario Municipal Board Act* as though the giving of the approval were the incurring of a debt or obligation or the making of an expenditure by the City. O.M.B.
approval

R.S.O. 1980,
cc. 302, 347

(6) Subsection (5) does not apply where the corporation is exercising its powers under section 16 or 17 in respect of the appointment, hiring and paying of its officers, servants and employees. Exception

22.—(1) The corporation shall provide the City with monthly statements of, Monthly
statements

- (a) revenues and expenditures;
- (b) profit and loss; and
- (c) such financial matters or operating expenditures as council may require.

(2) The statements referred to in subsection (1) shall be in such form as the City treasurer may require. Idem

23.—(1) The corporation shall keep or cause to be kept proper books of account and accounting records with respect to all financial and other transactions of the corporation, including, and without limiting the generality of the foregoing, Accounting
records

- (a) records of all sums of money received from any source whatsoever and disbursed in any manner whatsoever; and
- (b) records of all matters with respect to which receipts and disbursements take place in consequence of the maintenance, operation and management of the corporation.

City treasurer (2) The corporation shall keep or cause to be kept and maintained all such books of accounts and accounting records as the City treasurer may require.

Examination of books, etc. **24.** The corporation shall make all of its books and records available at all times to such persons as the council may require and shall provide certified true copies of such minutes, documents, books, records or any other writing as council may require.

Inventory of personal property **25.—**(1) The corporation shall, in accordance with good business practice, keep and maintain an accurate inventory of its personal property and provide council with an inventory thereof as council may require.

Idem (2) The inventory shall include separate inventories of the personal property for the Theatre-Auditorium, the Convention Centre and the Trade Centre-Arena.

Auditor **26.** The accounts and transactions of the corporation shall be audited by the auditor of the City.

Information, etc. **27.—**(1) The council may require the corporation,
(a) to provide information, records, accounts, agendas, notices or any paper or writing; and
(b) to make a report on any matter,

as council determines, relating to the carrying out of the purposes and objects of the corporation.

Filing of reports, etc. (2) The corporation shall,
(a) file with the City clerk all such information, records, accounts, agendas, notices, paper and other materials as council may require; and
(b) make such reports within the time specified by council and containing such content as council may require.

Deemed not to be a local board R.S.O. 1980, c. 348 **28.** Except for the purposes of the *Ontario Municipal Employees Retirement System Act*, the corporation shall be deemed not to be a local board of the City.

Open meetings **29.—**(1) The meetings of the board and the corporation shall be open to the public and no person shall be excluded

from a meeting except for improper conduct as determined by the board.

(2) Notwithstanding subsection (1), meetings of the board may be held *in camera* in respect of, Exceptions

- (a) personnel matters, including matters related to wages, salaries and benefits;
- (b) discipline, unless the individual affected requests that the meetings be open to the public;
- (c) collective bargaining;
- (d) litigation and communications respecting solicitor-client relationships, including legal opinions and advice; and
- (e) proposed or actual contracts with persons and the financial results thereof, proposing or holding conventions, meetings, receptions, trade shows, conferences or events of any kind.

30.—(1) Subject to subsection (2), every director or officer of the corporation and his or her heirs, executors, administrators and other legal personal representatives may from time to time be indemnified and saved harmless by the corporation from and against, Indemnification

- (a) any liability and all costs, charges and expenses that he or she sustains or incurs in respect of any action, suit or proceeding that is proposed or commenced against him or her for or in respect of anything done or permitted by him or her in respect of the execution of the duties of his or her office; and
- (b) all other costs, charges and expenses that he or she sustains or incurs in respect of the affairs of the corporation.

(2) No director or officer of the corporation shall be indemnified by the corporation in respect of any liability, costs, charges or expenses that he or she sustains or incurs in or about any action, suit or other proceeding as a result of which he or she is adjudged to be in breach of any duty or responsibility imposed upon him or her under this or any other statute unless, in an action brought against him or her in his or her capacity as director or officer, he or she has achieved complete or substantial success as a defendant. Limitation

Insurance

(3) The corporation may purchase and maintain insurance for the benefit of a director or officer thereof, except insurance against a liability, cost, charge or expense of the director or officer incurred as a result of his or her failure to exercise the powers and discharge the duties of his or her office honestly, in good faith and in the best interests of the corporation, exercising in connection therewith the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

Corporation deemed not to be tenant or carrying on business for purposes of R.S.O. 1980, c. 31

31. For the purposes of the *Assessment Act*, the corporation shall be deemed not to be,

- (a) a tenant or lessee that is liable to taxation; or
- (b) occupying the Theatre-Auditorium, the Convention Centre or the Trade Centre-Arena for the purpose of or in connection with the carrying on of business.

Profits

32.—(1) The City shall be entitled to receive any profits resulting from the operations of the corporation and shall be responsible for any deficit incurred by the corporation.

Idem

(2) For the purpose of subsection (1), the City may determine what constitutes profits.

Claims, etc.

33. All claims, accounts, demands, suits-at-law or causes of action arising from or relating to the objects of the corporation or from the exercise of any of the powers of the corporation shall be made upon and brought against the corporation and not upon or against the City.

Dissolution

34. Upon the dissolution of the corporation and upon the payment of all debts and liabilities, its remaining property vests in the City.

Dissolution of existing corporations and transition

35. The Hamilton Performing Arts Corporation, Inc. and The Hamilton Place Convention Centre, Inc. are hereby dissolved and all their assets and liabilities become, on the date this Act comes into force, the assets and liabilities of the corporation subject to the following:

1. Where an agreement has been entered into by The Hamilton Performing Arts Corporation, Inc., the corporation shall stand in place and stead of The Hamilton Performing Arts Corporation, Inc. in respect only of the Theatre-Auditorium.
2. Where an agreement has been entered into by The Hamilton Place Convention Centre, Inc., the cor-

poration shall stand in place and stead of The Hamilton Place Convention Centre, Inc. in respect only of the Convention Centre.

36. The following are repealed:

Repeals

1. *The City of Hamilton Act, 1972*, being chapter 178.
2. Section 3 of *The City of Hamilton Act, 1975*, being chapter 97.
3. *The City of Hamilton Act, 1977*, being chapter 87.
4. *The City of Hamilton Act, 1980*, being chapter 99.
5. *The City of Hamilton Act, 1982*, being chapter 72.

37. This Act comes into force on the day it receives Royal Assent.

Commence-
ment

38. The short title of this Act is the *City of Hamilton Act, 1985*.

Short title

